IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10047 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISHWARLAL BHOJAJI GEHLOT (MARWADI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10047 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HANSA PUNANI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/01/2005

ORAL JUDGEMENT

This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by the Police Commissioner, Ahmedabad City on 31/7/2004 in exercise of powers conferred upon him under sec.3(2) of the Gujarat Prevention of Antisocial activities Act, 1985 ("PASA Act" for short). The petitioner is under detention as "Bootlegger" from 1/8/2004 in pursuance of the above order. The grounds of detention placed on record reveals that the detaining authority took into consideration the fact of registration of crime against the petitioner for the breach of Bombay Prohibition Act on 29/78/2004 before the Shaher-kotada Police Station. The crime came to be registered against the petitioner because he was found in possession of some quantity of foreign liquor. The detaining authority has considered exhaustively and thoroughly investigation papers in the above said criminal case registered against the petitioner. The detaining authority from the above material came to the conclusion that the petitioner was dealing, storing, transporting and selling illegal liquor and was Bootlegger within the meaning of PASA Act. The detaining authority came to the conclusion that due to the activities of the petitioner, public order was disturbed and public health was adversely affected. The detaining authority came to the conclusion that the activities of the petitioner were required to be prevented forthwith. The detaining authority considered other measures available in general law against the petitioner, but came to the conclusion that those steps were likely to take time and to prevent the illegal activities of the petitioner forthwith, the only alternative was to detain the petitioner under the PASA Act. Therefore, the detaining authority passed the order for detention of the petitioner under the PASA Act, which is under challenge in this petition.

2. Learned advocate Mr.M.R. Prajapati for the petitioner and learned A.G.P. Ms.Hansa Punani for the respondents were heard at length. Affidavit-in-reply filed by the detaining authority and placed on record by the learned A.G.P. is also taken into consideration.

3. Out of various grounds urged on behalf of the petitioner and opposed and and controverted by the learned A.G.P., it appears that this petition can be examined and disposed of on the sole ground that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, public order was disturbed and public health was adversely affected.

4. The reach to the subjective satisfaction that the bootlegging activities of the petitioner were prejudicial to the maintenance of the public order and public health, the detaining authority must rely upon the credible and cogent material indicating that the activities of the petitioner directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity amongst general public or any section thereof or there was danger to life, property or public health. While doing this exercise, the detaining authority must also draw a clear line between the cases falling within the breach of law and order and breach of public order. The detaining authority must also considered the reach and impact of the activities of the detaining authority to judge the potentiality of the activities to come to the conclusion that the activities of the petitioner were capable of disturbing the public order.

5. Referring to the facts of the present case, it is clear that the detaining authority considerede the relevant papers of investigation in solitary crime registered against the petitioner for breach of the provisions of the Bombay Prohibition Act. Going through the investigation papers, as placed on record, though it is true that as per the allegation, the petitioner was found in possession of some foreign-made liquor but the same material cannot be said to be credible material to come to the conclusion that by the activity of the petitioner, as revealed through the investigation papers, was likely to alarm and danger to the public at large or section thereof or danger to the public health. Therefore, the act of the petitioner constituting the offence registered against the petitioner may be breach of law and order for which the petitioner may be tried and may be punished, if found guilty. But the same has no bearing to the maintenance of public order, as envisaged by the PASA Act. True that there cannot be law that a solitary offence is not sufficient to detain a person under law of preventive detention, but it always depends upon the facts of each case that the activities revealing through the solitary offence registered against the detenu leads to inference that the fall out, impact and reach of the activities is capable of disturbing the public order as envisaged by the PASA Act. In similar circumstances in the matter of Darpankumar Sharma Vs. State of T.N. & Ors., as reported in (2003) 2 S.C.C. page 313, when a solitary offence of robbery was registered against the detenu, the Apex Court observed that nothing was on record to show that the reach and potentiality of the incident was so grave to disturb even

the tempo or normal life of the community in the locality or disturb the public peace and tranquility or create a scene of alarm and insecurity in the locality. The Apex Court, therefore, on facts held that the solitary incident of robbery was not relevant for sustaining the order of detention. In the present case as well the incident revealed through the registration of solitary crime registered against the petitioner does not lead to an inference that by the activity of the petitioner maintenance of public order was disturbed. Except the above material, no other material was taken into consideration by the detaining authority. The subjective satisfaction, therefore, arrived at by the detaining authority in respect of the public order is not legal, valid or in accordance with law. The order under challenge in this petition is required to be quashed on this ground alone.

6. In the result, in view of the above discussion, this petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City on 31/7/2004 against the petitioner in exercise of powers under sec.3(2) of the PASA Act is hereby quashed and set aside. The petitioner namely Ishwarlal Bhojaji Gehlot (Marwadi) is ordered to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute.

D.S. Permitted.

(J.R. VORA,J.)

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